IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1539 OF 2005

Narayan Krishna Chinchkar ...Appellant
Vs.
Indubai Gulabrao Dhavan & Ors. ...Respondents

Ms Kiran Bhagalia i/b Ms Lalita Panchakshari for Appellant
Mr.A.A.Kumbhakoni a/w Mr.A.P.Kulkarni for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 19,2006.

P.C.:

1. Heard the learned Counsel for the parties. The Second Appeal is filed by the original Plaintiff No.2. The challenge in the suit was to the sale deed dated 10th September 1964 broadly on two grounds. The first ground was that the original Plaintiff No.1 Muktabai had never executed the said sale deed. The second ground was that the other executant Maruti was a minor on the date of execution of the sale deed. The Trial Court dismissed the suit on the ground that it was barred by limitation. The suit was also dismissed on merits. An Appeal preferred in the District Court only by the present Appellant was dismissed. The Appellate Court also held that the suit was barred by limitation. The Appellate Court held that the execution of the sale deed by the Appellant No.1 Muktabai was established and the said Maruti was not a minor on the date of execution of the sale deed.

2. The learned Counsel for the Appellant submitted that the original sale deed dated 10th September 1964 never came

before the Court. She submitted that the original Plaintiff No.1 had denied the execution of the sale deed. She pointed out that the evidence of the so called witness to the sale deed does not inspire any confidence. She submitted that the finding of the Appellate Court on the issue of limitation was perverse and the same is required to be set aside.

3. I have considered the submissions. So far as the age of Maruti on the date of execution of the sale deed is concerned, there are concurrent findings of fact recorded on the basis of documentary evidence in the form of entries in the register of school in which Maruti was studying. The entries have been established by examining the necessary witnesses. The date of birth of the said Maruti in the school register was found to be 7th May 1946. The said finding is based on appreciation of oral and documentary evidence on record and no interference is permissible in Second Appeal.

4. So far as proof of document is concerned, the Plaintiff No.1 Muktabai stepped into witness box. When the suit was kept for cross examination of Muktabai, it was adjourned. Subsequently, the said Muktabai expired and therefore she could not be cross examined. The Appellate Court observed that the examination-in-chief of Muktabai will have to be ignored as she was not cross examined. The Judgment of the Appellate Court discloses that an application was made by the Defendants for leading secondary evidence by producing

photostat copy of the sale deed. The said application was rejected by the Trial Court and a Revision Application was filed by the Appellant before this Court. In the said Civil Revision Application, this Court directed reconsideration of the Application. The case of the Respondents appears to be that the original sale deed was handed over to their lawyer and was misplaced. One Shri Bhalchandra Vasudeo Radkar, Advocate who was practising Advocate for 26 years came before the court and deposed that the document was lost. The Appellate Court observed that there was no reason to disbelieve his evidence. The Court has permitted secondary evidence to be led for proof of the sale deed.

5. After considering the oral testimony of the witnesses, the Appellate Court has recorded a finding of fact that the execution of the sale deed which is a registered document has been duly proved.

6. The finding of the Appellate Court as regards execution of the sale deed and age of Maruti are based on the appreciation of oral and documentary evidence on record. It is difficult to find fault with the said findings. In view of this position, it is not necessary to deal with the issue of limitation. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge.